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14 THE UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
16

17 AMERIS BANK, a Georgia state-
18 chartered banking corporation, doing
business as BALBOA CAPITAL
CORPORATION,

19 Plaintiff,

20 vs.

21 PANNU TRANSPORT, INC., a
22 Virginia corporation; PARVINDER
SINGH, an individual,

23 Defendants.
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Case No. 8:23-cv-02407-JVS(JDEx)

[Assigned to the Hon. James V. Selna]

**BALBOA CAPITAL
CORPORATION'S MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANT PANNU TRANSPORT,
INC.**

Complaint Filed: December 19, 2023
Trial Date: None

1 TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 7, 2024, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, in Courtroom 10C of the Ronald Reagan
4 Federal Building and United States Courthouse, located at 411 West Fourth Street,
5 Santa Ana, CA, 92701-4516, the Honorable James V. Selna presiding, plaintiff
6 Ameris Bank, doing business as Balboa Capital Corporation (“Plaintiff” or
7 “Balboa”) will, and hereby does, apply for an entry of default judgment pursuant to
8 Federal Rules of Civil Procedure Rule 55 and Local Rules 55-1, 55-2, and 55-3,
9 against defendant Pannu Transport Inc., a Virginia corporation (“Pannu Transport”
10 or “Defendant”), for a judgment amount of **\$228,123.55**.

11 PLEASE TAKE FURTHER NOTICE that Balboa seeks a default judgment
12 against Defendant in the total amount of \$228,123.55, as Balboa has established (a)
13 a sum certain due and owing by Defendant to Balboa pursuant to the Vehicle
14 Financing Agreement and Equipment Financing Agreements No. 1 and No. 2
15 entered into by Defendant and Balboa; (b) that Defendant is not in military service
16 and is neither a minor or incompetent person; and (c) costs and attorneys’ fees are
17 properly awardable.

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1 PLEASE TAKE FURTHER NOTICE that this motion is based on this
2 Notice of Motion, the supporting Memorandum of Points and Authorities, the
3 supporting declarations of Jared T. Densen and Don Ngo, and the exhibits attached
4 thereto, the pleadings and papers filed in this action, and upon such further briefing,
5 authorities, and argument submitted to the Court prior to, or during, the hearing on
6 this matter.

7
8 DATED: September 4, 2024

SALISIAN | LEE LLP

9
10 By: 

Jared T. Densen
Neal S. Salisian
Brian C. Zhang

11
12
13 Attorneys for Plaintiff
14 AMERIS BANK d/b/a BALBOA CAPITAL
15 CORPORATION
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

Plaintiff Ameris Bank, a Georgia state-chartered banking corporation, doing business as Balboa Capital Corporation (“Plaintiff” or “Balboa”) submits the instant Motion for Default Judgment against defendant Pannu Transport Inc., a Virginia corporation (“Pannu Transport” or “Defendant”)¹.

A. Vehicle Financing Agreement.

This action involves a claim for damages by Balboa against Defendant for the breach of the written Vehicle Financing Agreement No. 349852-000 (the “VFA”). [See Declaration of Don Ngo (“Ngo Decl.”), ¶3, Exh. A.]

Specifically, Balboa, on the one hand, and Pannu Transport, on the other, entered into the VFA on or about April 25, 2021. [See *id.*] Under the terms of the VFA, Balboa loaned to Pannu Transport the sum of \$83,717.88, in order to finance equipment for its business (“Collateral No. 1”). [See *id.*]

Under the VFA, Pannu Transport was required to make sixty seventy-two (72) monthly payments of \$1,667.91, beginning April 25, 2021. [See *id.*, ¶4, Exh. B.] The last payment received by Balboa was credited toward the payment due for September 25, 2023. [See *id.*] Therefore, on October 25, 2023, Pannu Transport breached the VFA by failing to make the monthly payment due on that date, and thus, has remained continuously in default. [See *id.*]

At the time of Defendant’s default, in addition to the late charges in the sum of \$300.22, there remained forty-two (42) monthly payments, for a total of \$ 70,352.45, due to Balboa. [See *id.*, ¶5.] Defendant has since failed to make further payments. [See *id.*]

¹ Balboa is not filing this Motion against defendant Parvinder Singh (“Singh”) due to the filing of Chapter 7 Bankruptcy. [See Dkt. 24.] Balboa will dismiss Singh without prejudice pursuant to this Motion being granted.

1 Following Defendant's default, Balboa repossessed and sold Collateral No. 1,
2 thereby crediting Defendant in the amount of \$32,710.00. [*See id.*, ¶6.] Thus,
3 **\$37,642.45** remains owed to Balboa. [*See id.*]

4 In addition, based on the amount due of \$37,642.45, Balboa is entitled to
5 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
6 October 24, 2023, the date of breach, to October 7, 2024, the date noticed for the
7 hearing of this Motion for Default Judgment ("Default Motion"), for a total interest
8 amount of **\$3,598.19**, accruing at a rate of **\$10.31 per day**, until the entry of
9 judgment. [*See id.*, ¶7; *see also* Declaration of Jared T. Densen ("Densen Decl."),
10 ¶¶5-6.]

11 **B. Equipment Financing Agreement No. 1.**

12 This action also involves a claim for damages by Balboa against Defendant
13 for the breach of the written Equipment Financing Agreement No. 349852-001
14 ("EFA No. 1"). [*See* Ngo Decl., ¶9, Exh. C.]

15 Specifically, Balboa, on the one hand, and Pannu Transport, on the other,
16 entered into EFA No. 1 on or about June 22, 2023. [*See id.*] Under the terms of
17 EFA No. 1, Balboa loaned to Pannu Transport the sum of \$78,350.96, in order to
18 finance equipment for its business ("Collateral No. 2"). [*See id.*]

19 Under EFA No. 1, Pannu Transport was required to make forty-eight (48)
20 monthly payments of \$2,094.00, beginning August 21, 2023. [*See id.*, ¶10, Exh.
21 D.] The last payment received by Balboa was credited toward the payment due for
22 September 21, 2023. [*See id.*] Therefore, on October 21, 2023, Pannu Transport
23 breached EFA No. 1 by failing to make the monthly payment due on that date, and
24 thus, has remained continuously in default. [*See id.*]

25 At the time of Defendant's default, in addition to the late charges in the sum
26 of \$251.28, there remained forty-six (46) monthly payments, for a total of
27 \$96,575.29, due to Balboa. [*See id.*, ¶11.] Defendant has since failed to make
28 further payments. [*See id.*]

1 Following Defendant's default, Balboa repossessed and sold Collateral No. 2,
2 thereby crediting Defendant in the amount of \$13,699.75. [See *id.*, ¶12.] Thus,
3 **\$82,875.54** remains owed to Balboa. [See *id.*]

4 In addition, based on the amount due of \$82,875.54, Balboa is entitled to
5 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
6 October 21, 2023, the date of breach, to October 7, 2024, the date noticed for the
7 hearing of this Default Motion, for a total interest amount of **\$8,013.10**, accruing at
8 a rate of **\$22.70 per day**, until the entry of judgment. [See *id.*, ¶13; see also Densen
9 Decl., ¶¶8-9.]

10 **C. Equipment Financing Agreement No. 2.**

11 This action also involves a claim for damages by Balboa against Defendant
12 for the breach of the written Equipment Financing Agreement No. 349852-002
13 ("EFA No. 2"). [See Ngo Decl., ¶15, Exh. E.]

14 Specifically, Balboa, on the one hand, and Pannu Transport, on the other,
15 entered into EFA No. 2 on or about November 4, 2023. [See *id.*] Under the terms
16 of EFA No. 2, Balboa loaned to Pannu Transport the sum of \$74,149.92, in order to
17 finance equipment for its business ("Collateral No. 3"). [See *id.*]

18 Under EFA No. 2, Pannu Transport was required to make thirty (30) monthly
19 payments of \$2,918.00, beginning November 4, 2023. [See *id.*, ¶16, Exh. F.] On
20 November 4, 2023, Pannu Transport breached EFA No. 2 by failing to make the
21 monthly payment due on that date, and thus, has remained continuously in default.
22 [See *id.*]

23 At the time of Defendant's default, in addition to the a titling fee charges in
24 the sum of \$150.00, there remained thirty (30) monthly payments, for a total of
25 \$87,690.01, due to Balboa. [See *id.*, ¶17.]

26 Following Defendant's default, Defendants made four full monthly payments
27 covering November 4, 2023, December 4, 2023, January 4, 2024, and February 4,
28 2024, Balboa thereby credited Defendant in the amount of \$11,672.00. [See *id.*,

¶18.] Thus, **\$76,018.01** remains owed to Balboa. [*See id.*] Defendant has since failed to make further payments. [*See id.*]

In addition, based on the amount due of \$76,018.01, Balboa is entitled to prejudgment interest at the statutory rate of ten percent (10%) per annum, from November 4, 2023, the date of breach, to October 7, 2024, the date noticed for the hearing of this Default Motion, for a total interest amount of **\$7,057.98**, accruing at a rate of **\$20.82 per day**, until the entry of judgment. [*See id.*, ¶19; *see also* Densen Decl., ¶¶11-12.]

D. Attorneys' Fees and Costs

Pursuant to Paragraph 20 of the VFA, EFA No. 1, and EFA No. 2, Balboa is entitled to recover its attorneys' fees and costs from Defendant. [*See* Densen Decl., ¶¶7, 10, 13, Exh. G.] The amount of reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of **\$2,858.54** for the VFA, **\$4,915.02** for EFA No. 1, and **\$4,640.72** for EFA No. 2. [*See id.*] Balboa has incurred **\$504.00**, in recoverable costs - \$405 for filing of the Complaint, and \$99.00 for service upon Pannu Transport. [*See id.*]

E. Default Judgment Motion

Balboa's Default Motion satisfies the procedural requirements of Local Rule 55-1 and 55-2, and Federal Rule of Civil Procedure 55(b). Balboa filed its Complaint and case-initiating documents on December 19, 2023. [*See* Dkts. 1-4.] Defendant Pannu Transport was properly served on May 28, 2024, pursuant to Federal Rule of Civil Procedure 4. [*See* Dkt. 20.] On June 26, 2024, Balboa filed its Request for Clerk to Enter Default against defendant Pannu Transport ("Default Entry Request"), and the Clerk entered the default against the defendants on June 28, 2024. [*See* Dkts. 22-23.]

Defendant Pannu Transport is a Virginia, and is not a minor, incompetent person, or a person in military service or otherwise exempted from default

1 judgment under the Servicemembers Civil Relief Act of 1940 (the “SCRA”). [See
2 Densen Decl., ¶4.]

3 Moreover, this Court has subject matter jurisdiction over the instant action.
4 The amount in controversy, as alleged in the Complaint and as set forth herein,
5 exceeds \$75,000. [See Dkt. 1.] Plaintiff Balboa was and still operates as a
6 California corporation, with its principal place of business in Orange County,
7 California. [See Dkt. 1, ¶1; see also Densen Decl., ¶14.] Balboa is also now a
8 wholly owned subsidiary of Ameris Bank, and operating as a division of Ameris
9 Bank, a Georgia state-chartered banking corporation, and accordingly, Balboa is a
10 citizen of the State of California, as well as the State of Georgia, via its parent
11 company, Ameris Bank. [See *id.*]

12 Defendant Pannu Transport is a Virginia corporation, with their principal
13 place of business in the State of Virginia. [See *id.*, ¶15.] Thus, defendant Pannu
14 Transport is a citizen of the State of Virginia. [See *id.*, ¶15, Exh. H.] As such,
15 there exists complete diversity amongst Plaintiff and Defendant. [See *id.*, ¶16.]

16 As set forth below, a default judgment should be entered against each of the
17 Defendants since Balboa satisfies all seven factors under *Eitel*. Moreover, Balboa
18 has adequately proven its damages. Thus, Balboa respectfully requests that this
19 Court grant its request for a default judgment against Defendants in the amount of
20 **\$228,123.55**.

21 **II. LEGAL ARGUMENT**

22 “When a party against whom a judgment for affirmative relief is sought has
23 failed to plead or otherwise defend,” the Court may enter a judgment of default
24 upon Plaintiff’s application after an entry of default. *See* Fed. R. Civ. P. 55. Local
25 Rule 55 sets forth the procedural requirements that must be satisfied by a party
26 moving for a default judgment. Balboa’s Motion has satisfied such requirements.

27 Here, Balboa filed its Complaint and case-initiating documents on December
28 19, 2023. [See Dkts. 1-4.] Defendant Pannu Transport was properly served on

1 May 28, 2024, pursuant to Federal Rule of Civil Procedure 4. [See Dkt. 20.] On
2 June 26, 2024, Balboa filed its Default Entry Request, and the Clerk entered the
3 default against the Defendant on June 28, 2024. [See Dkts. 22-23.]

4 Defendant Pannu Transport is a Virginia corporation, and is not a minor,
5 incompetent person, or a person in military service or otherwise exempted from
6 default judgment under the SCRA. [See Densen Decl., ¶4.]

7 The Ninth Circuit follow the seven *Eitel* factors in deciding whether to enter
8 a default judgment:

9 (1) the possibility of prejudice to the plaintiff; (2) the merits
10 of plaintiff's substantive claim; (3) the sufficiency of the
11 complaint; (4) the sum of money at stake in the action; (5)
12 the possibility of a dispute concerning material facts; (6)
whether the default was due to excusable neglect; and (7)
the strong policy underlying the Federal Rules of Civil
Procedure favoring decisions on the merits.

13 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). A plaintiff need not
14 prove that all seven factors weigh in its favor, as courts *may* consider these factors
15 in their discretion on whether to enter a default judgment. *See id.*

16 Here, the underlying facts in this action show that all seven of the *Eitel*
17 factors weigh in Balboa's favor, and thus, supports the entry of default judgment.

18 **A. Plaintiff Will Be Highly Prejudiced If Its Default Judgment**
19 **Motion Is Denied.**

20 A situation in which a plaintiff will be without any other recourse or recovery
21 should its default judgment application be denied qualifies as prejudice. *See*
22 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

23 Here, Balboa has submitted its Motion for Default Judgment as a last resort
24 due to Defendant's deliberate unwillingness to accept responsibility for its actions
25 or even acknowledge Balboa's allegations.

26 The fact remains that Balboa, pursuant to the VFA, financed Collateral No. 1
27 for Defendant, with Defendant agreeing to make seventy-two (72) monthly
28 payments of \$1,667.91, for which forty-two (42) monthly payments, in addition to

1 the late charges in the sum of \$300.22 for a total of \$70,352.45, still remained due
2 to Balboa at the time of Defendant's default. [See Ngo Decl., ¶¶4-5, Exh. B.]
3 Defendant has failed to make further payments. [See *id.*] Following Defendant's
4 default, Balboa repossessed and sold Collateral No. 1, thereby crediting Defendant
5 in the amount of \$32,710.00. [See *id.*, ¶6.] Thus, **\$37,642.45** remains owed to
6 Balboa. [See *id.*]

7 Additionally, Balboa, pursuant to EFA No. 1, financed Collateral No. 2 for
8 Defendant, with Defendant agreeing to make sixty forty-eight (48) monthly
9 payments of \$2,094.00, for which forty-six (46) monthly payments, in addition to
10 the late charges in the sum of \$251.28, for a total of \$96,575.29, still remained due
11 to Balboa at the time of Defendant's default. [See *id.*, ¶¶10-11, Exh. D.] Defendant
12 have since failed to make further payments. [See *id.*] Following Defendant's
13 default, Balboa repossessed and sold Collateral No. 2, thereby crediting Defendant
14 in the amount of \$13,699.75. [See *id.*, ¶12.] Thus, **\$82,875.54** remains owed to
15 Balboa. [See *id.*]

16 Additionally, Balboa, pursuant to EFA No. 2, financed Collateral No. 3 for
17 Defendant, with Defendant agreeing to make thirty (30) monthly payments of
18 \$2,918.00, for which thirty (30) monthly payments, in addition to the a titling fee
19 charge in the sum of \$150.00, for a total of \$87,690.01, still remained due to Balboa
20 at the time of Defendant's default. [See *id.*, ¶¶16-17, Exh. E.] Following
21 Defendant's default, Defendants made four full monthly payments covering
22 November 4, 2023, December 4, 2023, January 4, 2024, and February 4, 2024,
23 Balboa thereby credited Defendant in the amount of \$11,672.00. [See *id.*, ¶18.]
24 Thus, **\$76,018.01** remains owed to Balboa. [See *id.*] Defendant has since failed to
25 make further payments. [See *id.*]

26 Balboa has made demands for its monies from Defendant, all of which
27 Defendant has failed to pay back. [See *id.*, ¶20.]
28

1 Balboa filed its Complaint in this action to recover the monies owed on it,
2 but Defendant have been unwilling to participate in, or otherwise acknowledge, the
3 litigation. Balboa's Motion for Default Judgment is its final option for an attempt
4 at recovery, and without the Court granting the default judgment, Balboa will be
5 prejudiced and be denied its right to a judicial resolution of its presented claims.
6 *See PepsiCo*, 238 F.Supp.2d at 1177.

7 Moreover, if Balboa's Motion for Default Judgment is denied, it will suffer a
8 significant loss due to no fault of its own, and Defendant will obtain a significant
9 windfall of over \$228,123.55. Not only will the deliberate nonaction by Defendant
10 and their continued stalling techniques be unjustly rewarded, but Balboa will
11 effectively be penalized for its procedurally proper demands for the return of its
12 monies available through the court system's proper channels.

13 Balboa will be substantially prejudiced, especially with no other available
14 recourse, should its Motion for Default Judgment be denied, and thus, further
15 supports the Default Judgment against Defendant to be granted by this Court.

16 **B. Plaintiff Has A High Likelihood Of Success On The Merits Of Its**
17 **Substantive Claims And Its Complaint Is Sufficiently Pled.**

18 "The general rule of law is that upon default[,] the factual allegations of the
19 complaint, except those relating to the amount of damages, will be taken as true."
20 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Courts often
21 consider the second (merits of the claim) and third (sufficiency of the complaint)
22 factors under *Eitel* together. *See PepsiCo*, 238 F.Supp.2d at 1177.

23 The elements for a breach of contract are: (1) the existence of a contract, (2)
24 performance by the plaintiff of its obligations under the contract, (3) breach of the
25 contract by the defendant, and (4) resulting damages proximately caused by the
26 defendant's breach of contract. *Reichert v. Gen. Ins. Co.*, 68 Cal.2d 822, 830
27 (1968); *Acoustics, Inc. v. Trepte Constr. Co.*, 14 Cal.App.3d 887, 916 (1971); *see*
28 *also* Civ. Code §§ 1620, 3300; and RESTATEMENT 2d. CONTRACTS § 235(2).

1 **i. Vehicle Financing Agreement.**

2 Here, all elements are met. Specifically, Balboa, on the one hand, and Pannu
3 Transport, on the other, entered into the VFA, under which Balboa loaned to Pannu
4 Transport the sum of \$83,717.88, in order to finance Collateral No. 1 for its
5 business. [See Ngo Decl., ¶3, Exh. A.]

6 Under the VFA, Pannu Transport was required to make seventy-two (72)
7 monthly payments of \$1,667.91, beginning April 25, 2021. [See *id.*, ¶4.] The last
8 payment received by Balboa was credited toward the payment due for September
9 25, 2023. [See *id.*] Therefore, on October 25, 2023, Pannu Transport breached the
10 VFA by failing to make the monthly payment due on that date, and thus, has
11 remained continuously in default. [See *id.*, Exh. B.]

12 At the time of Defendant's default, in addition to the late charges in the sum
13 of \$300.22, there remained forty-two (42) monthly payments, for a total of
14 \$70,352.45, due to Balboa. [See *id.*, ¶6.] Defendants have since failed to make
15 further payments. [See *id.*]

16 Following Defendant's default, Balboa repossessed and sold Collateral No. 1,
17 thereby crediting Defendant in the amount of \$32,710.00. [See *id.*, ¶6.] Thus,
18 **\$37,642.45** remains owed to Balboa. [See *id.*]

19 **ii. Equipment Financing Agreement No. 1.**

20 As to EFA No. 1, here, all elements are equally met. Specifically, Balboa, on
21 the one hand, and Pannu Transport, on the other, entered into EFA No. 1, under
22 which Balboa loaned to Pannu Transport the sum of \$78,350.96, in order to finance
23 Collateral No. 2 for its business. [See Ngo Decl., ¶9, Exh. C.]

24 Under EFA No. 1, Pannu Transport was required to make forty-eight (48)
25 monthly payments of \$2,094.00, beginning August 21, 2023. [See *id.*, ¶10.] The
26 last payment received by Balboa was credited toward the payment due for
27 September 21, 2023. [See *id.*] Therefore, on October 21, 2023, Pannu Transport
28

1 breached EFA No. 1 by failing to make the monthly payment due on that date, and
2 thus, has remained continuously in default. [*See id.*]

3 At the time of Defendant's default, in addition to the late charges in the sum
4 of \$251.28, there remained forty-six (46) monthly payments, for a total of
5 \$96,575.29, due to Balboa. [*See id.*, ¶11.] Defendant has since failed to make
6 further payments. [*See id.*]

7 Following Defendant's default, Balboa repossessed and sold Collateral No. 2,
8 thereby crediting Defendant in the amount of \$13,699.75. [*See id.*, ¶12.] Thus,
9 **\$82,875.54** remains owed to Balboa. [*See id.*]

10 **iii. Equipment Financing Agreement No. 2.**

11 As to EFA No. 2, here, all elements are equally met. Specifically, Balboa, on
12 the one hand, and Pannu Transport, on the other, entered into EFA No. 2, under
13 which Balboa loaned to Pannu Transport the sum of \$74,149.92, in order to finance
14 Collateral No. 3 for its business. [*See* Ngo Decl., ¶15, Exh. E.]

15 Under EFA No. 2, Pannu Transport was required to make thirty (30) monthly
16 payments of \$2,918.00, beginning November 4, 2023. [*See id.*, ¶16.] On
17 November 4, 2023, Pannu Transport breached EFA No. 2 by failing to make the
18 monthly payment due on that date, and thus, has remained continuously in default.
19 [*See id.*]

20 At the time of Defendant's default, in addition to a titling fee in the sum of
21 \$150.00, there remained thirty (30) monthly payments, for a total of \$87,690.01,
22 due to Balboa. [*See id.*, ¶18.]

23 Following Defendant's default, Defendants made four full monthly payments
24 covering November 4, 2023, December 4, 2023, January 4, 2024, and February 4,
25 2024, Balboa thereby credited Defendant in the amount of \$11,672.00. [*See id.*,
26 ¶18.] Thus, **\$76,018.01** remains owed to Balboa. [*See id.*] Defendant has since
27 failed to make further payments. [*See id.*]
28

1 **iv. All Agreements.**

2 There is no doubt, and it cannot be disputed that: (1) Balboa and Defendant
3 entered into the VFA, EFA No. 1, and EFA No. 2 (the “Agreements”); (2) Pannu
4 Transport received the loan in order to finance Collateral No.1, No. 2, and No. 3
5 (the “Collaterals”) for its business; (3) Defendant ceased making payments pursuant
6 to the Agreements; and (4) Balboa has suffered and continues to suffer damages
7 due to Defendant’s continued nonpayment. Thus, Balboa has a substantially high
8 likelihood in succeeding on the merits of its claims. In fact, no known defenses
9 exist to any of the material facts.

10 **C. The Sum Of Money At Stake Favors An Entry Of A Default**
11 **Judgment Against Defendants.**

12 As a general rule, courts factor the sum of money at stake on a case-by-case
13 basis, and in relation to the other factors influencing whether to enter default
14 judgment. *See Eitel*, 782 F.2d at 1472 (default judgment was denied where plaintiff
15 was seeking \$3 million in damages *and* the parties disputed material facts). This
16 requires the court to assess whether the recovery sought is proportional to the harm
17 caused by defendant’s conduct. *See Walters v. Statewide Concrete Barrier, Inc.*,
18 No. C 04-2559 JSW, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006) (“[i]f the
19 sum of money at issue is reasonably proportionate to the harm caused by the
20 defendant’s actions, then default judgment is warranted”).

21 In *Penpower Tech, Ltd. v. S.P.C. Tech.*, 627 F. Supp. 2d 1083 (N.D. Cal.
22 2008), despite reasoning that plaintiff’s request for \$677,075.37 in treble damages,
23 \$500,000.00 in punitive damages, \$100,000.00 in statutory damages, attorneys’
24 fees of \$16,497.00, and costs of \$2,005.00, were “speculative” and weighed against
25 default judgment, the court nevertheless granted plaintiff’s default judgment.

26 Here, Balboa seeks compensatory damages pursuant to the VFA in the
27 amount of **\$37,642.45**; prejudgment interest from October 25, 2023, the date of
28 breach, to October 7, 2024, the date noticed for the hearing of this Default Motion,

1 in the amount of **\$3,598.19**, plus **\$10.31 per day** until the entry of judgment;
2 statutory attorneys' fees, in the amount of **\$2,858.54**; and costs in the amount of
3 **\$504.00**. [See Densen Decl., ¶¶5-7, Exh. G.] The damages sought are
4 contractually-based and arise out of the clear terms and obligations of the VFA; the
5 prejudgment interest was calculated at the statutory rate of ten percent (10%) per
6 annum; and the attorneys' fees requested are fixed by Local Rule 55-3. [See *id.*,
7 ¶7.]

8 Additionally, Balboa seeks compensatory damages pursuant to EFA No. 1 in
9 the amount of **\$82,875.54**; prejudgment interest from October 21, 2023, the date of
10 breach, to October 7, 2024, the date noticed for the hearing of this Default Motion,
11 in the amount of **\$8,013.10**, plus **\$22.70 per day** until the entry of judgment;
12 statutory attorneys' fees, in the amount of **\$4,915.02**. [See Densen Decl., ¶¶8-10.]
13 The damages sought are contractually-based and arise out of the clear terms and
14 obligations of EFA No. 1; the prejudgment interest was calculated at the statutory
15 rate of ten percent (10%) per annum; and the attorneys' fees requested are fixed by
16 Local Rule 55-3. [See *id.*, ¶10.]

17 Additionally, Balboa seeks compensatory damages pursuant to EFA No. 2 in
18 the amount of **\$76,018.01**; prejudgment interest from November 4, 2023, the date
19 of breach, to October 7, 2024, the date noticed for the hearing of this Default
20 Motion, in the amount of **\$7,057.98**, plus **\$20.82 per day** until the entry of
21 judgment; statutory attorneys' fees, in the amount of **\$4,640.72**. [See Densen Decl.,
22 ¶¶11-13.] The damages sought are contractually-based and arise out of the clear
23 terms and obligations of EFA No. 2; the prejudgment interest was calculated at the
24 statutory rate of ten percent (10%) per annum; and the attorneys' fees requested are
25 fixed by Local Rule 55-3. [See *id.*, ¶13.]

26 As such, the sum of money sought is reasonable and far from speculative. It
27 is also substantially less than the \$3 million sought in *Eitel*, in which this sum, and
28 other factors, weighed in the favor of denying default judgment. And it is also

1 substantially less than the roughly \$1.3 million sought in *Penpower Tech*, in which
2 default judgment was granted, despite the sum of money being deemed
3 “speculative.”

4 Thus, the sum of money sought in this action weighs in the favor of granting
5 default judgment, especially in the light of the other seven *Eitel* factors, and due to
6 the certainty and reasonableness of the sum.

7 **D. There Are No Material Facts That Are Reasonably In Dispute.**

8 “The general rule of law is that upon default[,] the factual allegations of the
9 complaint, except those relating to the amount of damages, will be taken as true.”
10 *See Geddes, supra*, 559 F.2d at 560. Where a plaintiff’s complaint is well-pleaded
11 and the defendants make no effort to properly respond, the likelihood of disputed
12 facts is very low. *See Landstar Ranger, Inc. v. Parth Enters, Inc.*, 725 F.Supp.2d
13 916, 921 (C.D. Cal. 2010).

14 As thoroughly detailed in Section II.B., *supra*, there are no material facts that
15 are reasonably in dispute.

16 Here, specifically, Balboa, on the one hand, and Pannu Transport, on the
17 other, entered into the VFA on or about April 25, 2021. [*See* Ngo Decl., ¶3, Exh.
18 A.] Under the terms of the VFA, Balboa loaned to Pannu Transport the sum of
19 \$83,717.88, in order to finance Collateral No. 1 for its business. [*See id.*]

20 Under the VFA, Pannu Transport was required to make seventy-two (72)
21 monthly payments of \$1,667.91, beginning April 25, 2021. [*See id.*, ¶4, Exh. C.]
22 The last payment received by Balboa was credited toward the payment due for
23 September 25, 2023. [*See id.*] Therefore, on October 25, 2023, Pannu Transport
24 breached the VFA by failing to make the monthly payment due on that date, and
25 thus, has remained continuously in default. [*See id.*]

26 At the time of Defendant’s default, in addition to the late charges in the sum
27 of \$300.22, there remained forty-two (42) monthly payments, for a total of
28

1 \$70,352.45, due to Balboa. [*See id.*, ¶6, Exh. B.] Defendants have since failed to
2 make further payments. [*See id.*]

3 Following Defendant's default, Balboa repossessed and sold Collateral No. 1,
4 thereby crediting Defendant in the amount of \$32,710.00. [*See id.*, ¶6.] Thus,
5 **\$37,642.45** remains owed to Balboa. [*See id.*]

6 And as for EFA No. 1, here, specifically, Balboa, on the one hand, and Pannu
7 Transport, on the other, entered into EFA No. 1 on or about June 22, 2023. [*See id.*,
8 ¶9, Exh. C.] Under the terms of EFA No. 1, Balboa loaned to Pannu Transport the
9 sum of \$78,350.96, in order to finance Collateral No. 2 for its business. [*See id.*]

10 Under EFA No. 1, Pannu Transport was required to make forty-eight (48)
11 monthly payments of \$2,094.00, beginning August 21, 2023. [*See id.*, ¶10, Exh.
12 D.] The last payment received by Balboa was partially credited toward the
13 payment due for September 21, 2023. [*See id.*] Therefore, on October 21, 2023,
14 Pannu Transport breached EFA No. 1 by failing to make the monthly payment due
15 on that date, and thus, has remained continuously in default. [*See id.*]

16 At the time of Defendant's default, in addition to the late charges in the sum
17 of \$251.28, there remained forty-six (46) monthly payments, for a total of
18 \$96,575.29, due to Balboa. [*See id.*, ¶11.] Defendant has since failed to make
19 further payments. [*See id.*]

20 Following Defendant's default, Balboa repossessed and sold Collateral No. 2,
21 thereby crediting Defendant in the amount of \$13,699.75. [*See id.*, ¶12.] Thus,
22 **\$82,875.54** remains owed to Balboa. [*See id.*]

23 And as for EFA No. 2, here, specifically, Balboa, on the one hand, and Pannu
24 Transport, on the other, entered into EFA No. 2 on or about November 4, 2023.
25 [*See id.*, ¶15, Exh. E.] Under the terms of EFA No. 2, Balboa loaned to Pannu
26 Transport the sum of \$74,149.92, in order to finance Collateral No. 3 for its
27 business. [*See id.*]
28

1 Under EFA No. 2, Pannu Transport was required to make thirty (30) monthly
2 payments of \$2,918.00, beginning November 4, 2023. [See *id.*, ¶16, Exh. F.] On
3 November 4, 2023, Pannu Transport breached EFA No. 2 by failing to make the
4 monthly payment due on that date, and thus, has remained continuously in default.
5 [See *id.*]

6 At the time of Defendant's default, in addition to the titling fee charges in the
7 sum of \$150.00, there remained thirty (30) monthly payments, for a total of
8 \$87,690.01, due to Balboa. [See *id.*, ¶17.]

9 Following Defendant's default, Defendants made four full monthly payments
10 covering November 4, 2023, December 4, 2023, January 4, 2024, and February 4,
11 2024, Balboa thereby credited Defendant in the amount of \$11,672.00. [See *id.*,
12 ¶18.] Thus, **\$76,018.01** remains owed to Balboa. [See *id.*] Defendant has since
13 failed to make further payments. [See *id.*]

14 Defendant cannot dispute any of the facts in any way or make any reasonable
15 arguments surrounding any of the material facts in this action. If anything,
16 Defendant's refusal to participate in, or even acknowledge the litigation, is evidence
17 that no such defense exists.

18 **E. Defendant's Default Is Not The Result Of Excusable Neglect.**

19 Excusable neglect is not found where a defendant who was properly served
20 simply ignored the deadline to respond. *See NewGen, LLC v. Safe Cig, LLC*, 804
21 F.3d 606, 616 (9th Cir. 2016) (adding that defendant's counsel contacting plaintiff's
22 counsel after default had been entered did not constitute to "excusable neglect"). In
23 fact, courts have required some showing of good faith by the defaulted defendant to
24 constitute "excusable neglect." *See Eitel*, 782 F.2d at 1471-72 (defendant's failure
25 to answer was held to be excusable neglect in light of ongoing settlement
26 negotiations); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (finding
27 excusable neglect where defendant filed an answer past the deadline and on the
28 same day that the motion for default judgment was filed); *O'Connor v. State of*

1 *Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (excusable neglect was found where
2 defendant has good faith of a timely answer); *Educational Serv., Inc. v. Maryland*
3 *State Board for Higher Education*, 710 F.2d 170, 176 (4th Cir. 1983) (excusable
4 neglect found where defendant had appeared in the action and opposed a request for
5 a preliminary injunction in which the party had set forth its defenses); *McKnight v.*
6 *Webster*, 499 F.Supp. 420, 424 (E.D. PA 1980) (excusable neglect found where
7 defendant sought an extension of time to respond, but a default judgment was
8 sought in the interim).

9 Where the defendants “were properly served with the Complaint, the notice
10 for the entry of default, as well as documents in support of the instant [default
11 judgment application],” favors this factor for the entry of default judgment. *See*
12 *Shanghai Automation Instrument Co. Ltd. v. Kuei*, 194 F.Supp.2d 995, 1005 (N.D.
13 Cal. 2001).

14 Here, Defendant failed to make any showing whatsoever that their
15 unwillingness to participate in the litigation stemmed from, or was in any way due
16 to, excusable neglect. Defendant was properly served via substituted service upon
17 Gurvinder Pannu, as the registered agent for service of process for Pannu Transport,
18 at 6712 Selbourne Ln, Gainesville, VA 20155, by leaving copies of the documents
19 with Parvinder Signh, as the person most in charge at Pannu Tranport. [See Dkt.
20 20]

21 Further, Defendant was additionally served at the same address thereafter
22 with the Default Entry Request. [See Dkt. 22.] Defendant has not yet made any
23 appearance in the action, and thus, have not made any effort to answer, defend, or
24 otherwise participate, in this action.

25 As detailed above, courts have found for excusable neglect only in cases in
26 which a defendant makes good faith showing that the defendant attempts to
27 participate in the litigation to address and defend the allegations set forth against the
28 defendant. Declining to respond to a complaint after proper service (even in the

1 case where defendant's counsel contacts plaintiff's counsel after the entry of
2 default), does not warrant a finding of excusable neglect. *See NewGen*, 804 F.3d at
3 616.

4 Here, Defendant has failed to acknowledge their wrongdoings and the
5 allegations they face, even in the slightest degree. Instead, Defendant has blatantly
6 ignored Balboa's Complaint and all other papers filed thereafter. Rather,
7 Defendant's course of action in response to Balboa's Complaint, or the apparent
8 lack thereof, is intentional, and thus, would not constitute excusable neglect.

9 **F. Policy Concerns Favor Default Judgment In This Matter.**

10 Although courts have expressed that as a general rule, policy favors decisions
11 on the merits, cases should be decided on its merits only when *reasonably possible*.
12 *See Pena v. Seguros La Comercia, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)
13 (emphasis added). The policy preference to decide a case on its merits is not
14 dispositive, and thus, does not preclude a court from granting a default judgment.
15 *See Penpower Tech, Ltd.*, 627 F.Supp.2d at 1093 (defendants' failure to respond to
16 a Complaint makes a case decision on its merits impractical, if not, impossible).

17 Here, even the policy concerns to decide a case on its merits favor Balboa to
18 grant Balboa's request for a default judgment. As detailed in II.E., *supra*,
19 Defendant has made it abundantly clear that they will not participate in this
20 litigation, or even acknowledge the instant action. Defendant has deliberately
21 chosen a course of action to simply ignore Balboa and its claims against them,
22 including their own liability. Thus, the Court's decision will not be based on the
23 merits of this case since there is no reasonable possibility at this point given
24 Defendant's refusal to participate in this litigation.

25 Moreover, policy concerns certainly do not weigh in favor of rewarding
26 Defendant for their unwillingness to account for their liability to Balboa, and the
27 extremely prejudicial windfall they would receive should their deliberate silence
28 and stalling techniques be rewarded, at Balboa's expense. *See Section II.A., supra*.

1 **G. Plaintiff Has Proven Its Damages.**

2 Under the VFA, Pannu Transport was required to make seventy-two (72)
3 monthly payments of \$1,667.91, beginning April 25, 2021. [See Ngo Decl., ¶4,
4 Exh. B.] The last payment received by Balboa was credited toward the payment
5 due for September 25, 2023. [See *id.*] Therefore, on October 25, 2023, Pannu
6 Transport breached the VFA by failing to make the monthly payment due on that
7 date, and thus, has remained continuously in default. [See *id.*]

8 At the time of Defendant's default, in addition to the late charges in the sum
9 of \$300.22, there remained forty-two (42) monthly payments, for a total of
10 \$70,352.45, due to Balboa. [See *id.*, ¶5.] Defendants have since failed to make
11 further payments. [See *id.*]

12 Following Defendant's default, Balboa repossessed and sold Collateral No. 1,
13 thereby crediting Defendant in the amount of \$32,710.00. [See *id.*, ¶6.] Thus,
14 **\$37,642.45** remains owed to Balboa. [See *id.*]

15 In addition, based on the amount due of \$37,642.45, Balboa is entitled to
16 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
17 October 24, 2023, the date of breach, to October 7, 2024, the date noticed for the
18 hearing of this Default Motion, for a total interest amount of **\$3,598.19**, accruing at
19 a rate of **\$10.31 per day**, until the entry of judgment. [See *id.*, ¶7; see also Densen
20 Decl., ¶¶5-6.]

21 Additionally, under EFA No. 1, Pannu Transport was required to make forty-
22 eight (48) monthly payments of \$2,094.00, beginning August 21, 2023. [See *id.*,
23 ¶10, Exh. D.] The last payment received by Balboa was credited toward the
24 payment due for September 21, 2023. [See *id.*] Therefore, on October 21, 2023,
25 Pannu Transport breached EFA No. 1 by failing to make the monthly payment due
26 on that date, and thus, has remained continuously in default. [See *id.*]

27 At the time of Defendant's default, in addition to the late charges in the sum
28 of \$251.28, there remained forty-six (46) monthly payments, for a total of

1 \$96,575.29, due to Balboa. [*See id.*, ¶11.] Defendants have since failed to make
2 further payments. [*See id.*]

3 Following Defendant's default, Balboa repossessed and sold Collateral No. 2,
4 thereby crediting Defendant in the amount of \$13,699.75. [*See id.*, ¶12.] Thus,
5 **\$82,875.54** remains owed to Balboa. [*See id.*]

6 In addition, based on the amount due of \$82,875.54, Balboa is entitled to
7 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
8 October 21, 2023, the date of breach, to October 7, 2024, the date noticed for the
9 hearing of this Default Motion, for a total interest amount of **\$8,013.10**, accruing at
10 a rate of **\$22.70 per day**, until the entry of judgment. [*See id.*, ¶13; *see also* Densen
11 Decl., ¶¶8-9.]

12 Additionally, under EFA No. 2, Pannu Transport was required to make thirty
13 (30) monthly payments of \$2,918.00, beginning November 4, 2023. [*See id.*, ¶16,
14 Exh. F.] On November 4, 2023, Pannu Transport breached EFA No. 2, by failing
15 to make the monthly payment due on that date, and thus, has remained continuously
16 in default. [*See id.*]

17 At the time of Defendant's default, in addition to the titling fee charges in
18 the sum of \$150.00, there remained thirty (30) monthly payments, for a total of
19 \$87,690.01, due to Balboa. [*See id.*, ¶17.]

20 Following Defendant's default, Defendants made four full monthly payments
21 covering November 4, 2023, December 4, 2023, January 4, 2024, and February 4,
22 2024, Balboa thereby credited Defendant in the amount of \$11,672.00. [*See id.*,
23 ¶18.] Thus, **\$76,018.01** remains owed to Balboa. [*See id.*] Defendant has since
24 failed to make further payments. [*See id.*]

25 In addition, based on the amount due of \$76,018.01, Balboa is entitled to
26 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
27 November 4, 2023, the date of breach, to October 7, 2024, the date noticed for the
28 hearing of this Default Motion, for a total interest amount of **\$7,057.98**, accruing at

1 a rate of **\$20.82 per day**, until the entry of judgment. [*See id.*, ¶19; *see also* Densen
2 Decl., ¶¶11-12.]

3 Pursuant to Paragraph 20 of the Agreements, Balboa is entitled to recover its
4 attorneys' fees and costs from Defendant. [*See* Densen Decl., ¶¶7, 10, 13, Exh.
5 H.] The amount of reasonable attorneys' fees is fixed by Local Rule 55-3, in the
6 sum of **\$2,858.54** for the VFA, **\$4,915.02** for EFA No. 1, and **\$4,640.72** for EFA
7 No. 2. [*See id.*] Balboa has indeed incurred **\$504.00** in recoverable costs. [*See id.*]

8 Altogether, this totals out to **\$228,123.55** (as of October 7, 2024), calculated
9 as follows:

10 **VFA:**

11 - Amount owed: \$ 37,642.45
12 - Prejudgment Interest: \$ 3,598.19
13 - Attorneys' Fees: \$ 2,858.54

14 **EFA No. 1:**

15 - Amount owed: \$ 82,875.54
16 - Prejudgment Interest: \$ 8,013.10
17 - Attorneys' Fees: \$ 4,915.02

18 **EFA No. 2:**

19 - Amount owed: \$ 76,018.01
20 - Prejudgment Interest: \$ 7,057.98
21 - Attorneys' Fees: \$ 4,640.72

22 **Costs:**

23 - Recoverable Costs: \$ 504.00
24 - **Total** **\$228,123.55**

25 //

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27 //

28 //

1 **III. CONCLUSION**

2 Based on Balboa's Complaint, Default Judgment Motion, and all supporting
3 papers, Balboa respectfully requests that the Court grant its Default Judgment
4 Motion against Defendant, in the total amount of **\$228,123.55**.

5
6 DATE: September 4, 2024

SALISIAN | LEE LLP

7
8 By: _____

9 Jared T. Densen

10 Neal S. Salisian

11 Brian C. Zhang

12 Attorneys for Plaintiff
13 AMERIS BANK d/b/a BALBOA CAPITAL
14 CORPORATION
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